

1 HONORABLE THOMAS S. ZILLY
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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT SEATTLE

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10 DEVITTA BRISCOE, as executor of the Estate
11 of Che Andre Taylor; JOYCE DORSEY,
12 individually; CHE ANDRE TAYLOR JR.,
13 individually; SARAH SETTLES on behalf of
14 her minor child, [REDACTED]
15 [REDACTED]; and DEMEKA GREEN for the
16 Estate of Brenda Taylor,

17 Plaintiffs,

18 v.

19 CITY OF SEATTLE; MICHAEL
20 SPAULDING and “JANE DOE”
21 SPAULDING, and their marital community
composed thereof; SCOTT MILLER and
“JANE DOE” MILLER, and their marital
community composed thereof,

Defendants.

NO. 2:18-cv-00262-TSZ

DEFENDANTS’ MOTION TO STAY
PROCEEDINGS PENDING APPELLATE
RULING ON QUALIFIED IMMUNITY

Noted for Consideration:
October 30, 2020

18 I. RELIEF REQUESTED

19 Defendants City of Seattle, Michael Spaulding and Scott Miller (“Defendants”) respectfully
20 request that this Court stay all pre-trial litigation and the trial, pending the Ninth Circuit’s decision on
21 Officers Spaulding and Miller’s interlocutory appeal of this Court’s decision denying qualified

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1 immunity on plaintiff's Fourth and Fourteenth Amendment claims. The witnesses, evidence, and
 2 arguments relevant to the state law claims against the City and officers overlap to such an extent that
 3 a stay would preserve the interests of judicial efficiency, limit the disruptions two trials might have
 4 on the involved litigants and witnesses, and avoid the risk of inconsistent verdicts.

5 **II. FACTUAL AND PROCEDURAL BACKGROUND**

6 Plaintiffs filed their Amended Complaint on January 3, 2020, asserting the following
 7 causes of action against all defendants: (1) Fourth Amendment false arrest; (2) Fourth Amendment
 8 excessive force claim; (3) Fourteenth Amendment Substantive Due Process claims for deprivation
 9 of familial relationships; (4) negligence; (5) outrage; and (6) discrimination under Washington's
 10 Law Against Discrimination, Title 49.60 RCW. (Amended Complaint, Dkt. #62.) Plaintiffs also
 11 asserted a *Monell* claim for 42 U.S.C. § 1983 municipal liability against the City of Seattle. (*Id.*)

12 On September 1, 2020, this Court entered an order granting in part and denying in part
 13 Defendants' Motion for Summary Judgment. (Order, Dkt. #117.) The Court dismissed the
 14 following claims: all causes of action against Officers Acuesta and Barnes, the *Monell* claim
 15 against the City, Brenda Taylor's and the estate's Fourteenth Amendment claims, and the
 16 discrimination claims. (*Id.*) The Court denied summary judgment with respect to the Fourth and
 17 Fourteenth Amendment claims against Officers Spaulding and Miller, as well as the negligence
 18 and outrage claims against Spaulding, Miller, and the City. (*Id.*)

19 With respect to the Fourth and Fourteenth Amendment claims against Officers Spaulding
 20 and Miller, this Court stated it was not concluding that the officers are not entitled to qualified
 21 immunity, but was instead ruling that factual questions precluded granting it at this stage. (*Id.* at

1 23.)

2 On September 15, 2020, Officers Spaulding and Miller filed a motion for reconsideration
3 on the Fourth Amendment false arrest claims and denial of qualified immunity with respect to
4 them. (Dkt. #118). The Court denied that motion on September 17, 2020. (Dkt. #120.) On
5 September 29, 2020, Officers Spaulding and Miller filed a timely notice of appeal of this Court's
6 orders denying qualified immunity. (Dkt. #125.)

7 In its Order denying reconsideration, this Court also ruled on the parties' motions in limine
8 and ordered the parties to submit a joint status report with respect to their availability for trial and
9 whether they will consent to conducting trial remotely via Zoom. (Dkt. #120.) The parties filed a
10 joint status report with the Court on October 1, 2020. (Dkt. #126.) In it, the parties provided an
11 available trial date of April 19, 2021 and informed the Court that Defendants intention to bring
12 this motion to stay pending the Ninth Circuit's disposition on the appeal. (*Id.*) This Court issued
13 a minute order setting a deadline of October 15, 2020 for filing this motion to stay. (Dkt. #128.)

14 **III. ISSUE PRESENTED**

15 Whether, in the interest of judicial economy, the Court should stay all proceedings and trial
16 pending the Ninth Circuit's decision on Officers Spaulding and Miller's interlocutory appeal.

17 **IV. EVIDENCE RELIED UPON**

18 Defendants rely on the pleadings, documents, and evidence already on record with this Court.

19 **V. ARGUMENT AND AUTHORITIES**

20 A district court's denial of a claim of qualified immunity, to the extent that it turns on an issue
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1 of law, is an immediately appealable “final decision” within the meaning of 28 U.S.C. § 1291.¹
 2 *Mitchell v. Forsyth*, 472 U.S. 551, 527 (1985); *Ames v. King County*, 846 F.3d 340, 347 (9th Cir.
 3 2017). The filing of an immediately appealable interlocutory claim divests the district court of
 4 jurisdiction to proceed with trial on that claim; it does not divest the district court of jurisdiction to
 5 continue with other phases of the case. *Chuman v. Wright*, 960 F.2d 104, 105 (9th Cir. 1992); *Plotkin*
 6 *v. Pacific Tel and Tel. Co.*, 688 F.2d 1291, 1293 (9th Cir. 1982).

7 Therefore, the filing of an interlocutory appeal does not automatically stay proceedings in the
 8 district court. *Filtrol Corp. v. Kelleher*, 467 F.2d 242, 244 (9th Cir. 1972). Instead, the district court
 9 has broad discretion to decide whether a stay is appropriate to “promote economy of time and effort
 10 for itself, for counsel, and for litigants.” *Id.* (citing *Landis v. North American Co.*, 299 U.S. 248, 254
 11 (1936)); *Mediterranean Enterprises, Inc. v. Ssangyong Corp.*, 708 F.2d 1458 1465 (9th Cir. 1983)
 12 (“A trial court may, with propriety, find it is efficient for its own docket and the fairest course for the
 13 parties to enter a stay of an action before it, pending resolution of independent proceedings which
 14 bear upon the case.”)

15 The party requesting a stay bears the burden of showing that the circumstances justify an
 16 exercise of that discretion. *Nken v. Holder*, 556 U.S. 418, 433-34 (2009). The propriety of the stay
 17 is dependent upon the circumstances of the particular case, and it exercising its judgment, the court
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19 ¹ While this Court ruled that there are genuine issues of material fact with respect to Mr. Taylor’s actions and the
 20 presence of the handgun that precluded summary disposition of the Fourth Amendment claims and qualified immunity,
 21 Defendants respectfully submit that the undisputed facts mandate a grant of qualified immunity. Defendants
 respectfully submit that the factual disputes cited by the Court with respect to the excessive force claim are speculative
 and do not create a genuine issue for trial. Additionally, as set forth in Defendants’ motion for reconsideration (dkt.
 #118), Defendants assert the Court erred as a matter of law in holding that probable cause to arrest had gone “stale.”
 These pure legal issues warrant interlocutory review.

1 should consider “(1) whether the stay applicant has made a strong showing that he is likely to succeed
 2 on the merits;² (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance
 3 of the stay will substantially injure the other parties interested in the proceeding; and (4) where the
 4 public interest lies.” *Id.* at 434 (citing *Hilton v. Braunschweig*, 481 U.S. 770, 776 (1987)). While the first
 5 two factors are the most critical, the Ninth Circuit weighs these factors with a “general balancing” or
 6 “sliding scale” approach, under which “a stronger showing of one element may offset a weaker
 7 showing of another. *Nken*, 556 U.S. at 434; *Leiva-Perez*, 640 F.3d at 964.

8 The core reason for a stay here is to avoid duplicative and costly trials that pertain to the same
 9 core facts. Plaintiffs’ outrage and negligence claims require the jury to resolve the same factual issues
 10 as the Fourth Amendment claims – namely, did the officers reasonably perceive that Che Taylor posed
 11 an imminent threat of death or serious bodily harm. Defendants have a good faith belief that Officers
 12 Spaulding and Miller are entitled to qualified immunity. If they prevail on appeal, there will be no
 13 need for a second trial to resolve the federal claims. However, if this Court’s order stands and the
 14 officers are not entitled to qualified immunity, then the claims against them will be remanded for trial,
 15 likely well after the trial on the state law claims has concluded. The Court will then have to set a new
 16 case schedule and devote all of the same resources to a second trial on the Fourth and Fourteenth
 17 Amendment claims. A new venire of jurors will have to be empaneled, pre-trial motions will be filed
 18 and decided, and counsel for Plaintiffs and Defendants will have to prepare for and present a nearly
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20 ² The first factor does not require a demonstration that success on appeal is more likely than not; rather, the moving
 21 party need only show that his or her appeal raises serious legal questions or has a reasonable probability or fair prospect
 of success. *Leiva-Perez v. Holder*, 640 F.3d 962, 971 (9th Cir. 2011).

1 identical case, involving the same witnesses and the same evidence. The trials will likely require the
2 testimony from more than fifteen witnesses, including experts whose appearances are costly.³

3 In addition to the inefficiency of two trials, there is also a risk of inconsistent verdicts. If
4 Plaintiffs do not prevail at the first trial, they may still prevail in the second trial on the Fourth and
5 Fourteenth Amendment claims against the officers. If Plaintiffs do prevail at the first trial, they may
6 not prevail at the second, resulting in inconsistent verdicts based on the same facts. Given the
7 relatively short briefing schedule on the appeal, with the officers' opening brief due November 30,
8 2020, Defendants respectfully requests that this Court stay the proceedings until the Ninth Circuit
9 rules on the issue of qualified immunity.

10 **VI. CONCLUSION**

11 The principles of judicial economy support a stay in this matter. The expense, burden, and
12 risk of two trials with potentially inconsistent verdicts outweighs any countervailing interests in
13 expeditiously resolving the state law claims. The Court should grant this motion and stay these
14 proceedings until the Ninth Circuit has decided whether the officers are entitled to qualified
15 immunity.

16 DATED this 15th day of October, 2020.

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21 ³ As set forth in the parties' joint status report, the parties also have a mediation scheduled for December 4, 2020. (Dkt. #126.) The potential for resolution at mediation also supports a stay.

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CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of October, 2020, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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